Republic Tool Products Company, a Division of Gibson Consolidated Industries, Inc. *and* Teamsters Local Union No. 957, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 9-CA-14372

August 24, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on September 26, 1979, by Teamsters Local Union No. 957, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Republic Tool Products Company, a Division of Gibson Consolidated Industries, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 9, issued a complaint on November 21, 1979, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on October 26, 1976, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate. The complaint also alleges that on or about September 14, 1979, Respondent closed its Dayton, Ohio, plant and terminated all the employees in the appropriate unit without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of Respondent's employees with respect to the effects of its conduct. Respondent has not filed an answer to the complaint.

On September 11, 1980, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 9, issued an order scheduling a hearing before an administrative law judge. Several subsequent efforts to contact Respondent proved unsuccessful. On April 7, 1981, counsel for the General Counsel attempted by certified mail to advise Respondent that, unless it filed an answer to the complaint by April 21, 1981, counsel for the General Counsel would file a Motion for Summary Judgment with the Board. The letter was sent to the last known home address of Respondent's president, Gerald Gibson. It was also sent to Gibson, as Respondent's statutory agent for service of process, at the address listed with the State of Ohio secretary of state. Both letters were returned with the notation "Moved, Left No Address." On April 22, 1981, counsel for the General Counsel attempted to reach Respondent by telephone, but was advised that Respondent's telephone had been disconnected. The Union has also been unable to locate Respondent, and there is no listing for Respondent in the 1980 telephone directory of Dayton, Ohio.

On April 30, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 7, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint served on Respondent stated that, unless an answer was filed within 10 days from the service thereof, "all of the allegations of the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Since Respondent has failed to file an answer to the complaint, the allegations of the complaint are deemed to be admitted and are found to be true. Accord-

ingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is an Ohio corporation engaged in the manufacture of clutch plates and metal stampings at its plant in Dayton, Ohio. During the 12 months preceding the issuance of the complaint, a representative period, Respondent, in the course and conduct of its business operations, sold and shipped goods and materials valued in excess of $50,000 to customers located outside the State of Ohio.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters Local Union No. 957, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees of Respondent at its operation located at 915 Valley Street, Dayton, Ohio, 45404; excluding all office clerical employees, guards, professional employees, supervisors, and salesmen.

2. The certification

The Union was certified as the collective-bargaining representative of the employees in said unit on October 26, 1976, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The 8(a)(5) and (1) Violation*

On or about September 14, 1979, Respondent closed its Dayton, Ohio, plant and terminated all the employees in the above-described bargaining unit without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of Respondent's employees with respect to the effects of its conduct.

Accordingly, we find that Respondent has, since on or about September 14, 1979, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit with respect to the effects of the plant closure and the termination of the unit employees, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit with respect to the effects of the plant closure and the termination of the unit employees, and, if an understanding is reached, embody such understanding in a signed agreement.

As a result of Respondent's unlawful failure to bargain about the effects of its conduct, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to include in our Order a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for Respondent. We shall

do so in this case by requiring Respondent to pay backpay to its employees in a manner similar to that required in *Transmarine Navigation Corporation and its Subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1968). Thus, Respondent shall pay employees backpay at the rate of their normal wages when last in Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the plant closure and the termination of the unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount he would have earned as wages from on or about September 14, 1979, when Respondent terminated its operations, to the time he secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ. Backpay shall be based on the earnings which the terminated employees normally would have received during the appplicable period, less any net interim earnings, and shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[1]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Republic Tool Products Company, a Division of Gibson Consolidated Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Local Union No. 957, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of Respondent at its operation located at 915 Valley Street, Dayton, Ohio 45404, excluding all office clerical employees, guards, professional employees, supervisors, and salesmen, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since October 26, 1976, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 14, 1979, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit with respect to the effects of the plant closure and the termination of the unit employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Republic Tool Products Company, a Division of Gibson Consolidated Industries, Inc., Dayton, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning the effects of the plant closure and the termination of the unit employees with Teamsters Local Union No. 957, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees of Respondent at its operation located at 915 Valley Street, Dayton, Ohio, 45404; excluding all office clerical employees, guards, professional employees, supervisors, and salesmen.

(b) In any like or related manner interfering with, restraining, or coercing employees in the ex-

[1] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

ercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following afffirmative action which the Board finds will effectuate the policies of the Act:

(a) Pay the terminated employees their normal wages for the period set forth in "The Remedy" section of this Decision and Order.

(b) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to the effects of the plant closure and the termination of the unit employees and, if an understanding is reached, embody such understanding in a signed agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in checking compliance with this Order.

(d) Mail a copy of the attached notice marked "Appendix"[2] to Teamsters Local Union No. 957, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and to all employees who were employed at it Dayton, Ohio, facility when that facility was closed. Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be mailed immediately upon receipt thereof, as herein directed.

(e) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning the effects of the plant closure and the termination of employees with Teamsters Local Union No. 957, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL pay the terminated employees their normal wages for the period set forth in the Board's Decision and Order in Case 9-CA-14372.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to the effects of the plant closure and the termination of employees and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees of the Employer at its operation located at 915 Valley Street, Dayton, Ohio, 45404; excluding all office clerical employees, guards, professional employees, supervisors, and salesmen.

REPUBLIC TOOL PRODUCTS COMPANY, A DIVISION OF GIBSON CONSOLIDATED INDUSTRIES, INC.